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**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 6**

**IN THE MATTER OF:**

Star Lake Canal Superfund Site  
Jefferson County, Texas

**HUNTSMAN PETROCHEMICAL  
CORPORATION,  
CHEVRON ENVIRONMENTAL  
MANAGEMENT COMPANY,**

**Respondents**

) **CERCLA Docket No. 06-02-06**  
)  
) **Administrative Settlement Agreement**  
) **and Order on Consent for Remedial**  
) **Investigation/Feasibility Study**  
)  
) **Proceeding under Sections 104, 107,**  
) **and 122 of the**  
) **Comprehensive Environmental Response,**  
) **Compensation and Liability Act, 42**  
) **U.S.C. §§ 9604, 9607, and 9622**  
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**ADMINISTRATIVE SETTLEMENT AGREEMENT AND ORDER ON CONSENT FOR  
REMEDIAL INVESTIGATION/FEASIBILITY STUDY**

**I. INTRODUCTION**

1. This Administrative Settlement Agreement and Order on Consent ("Settlement Agreement") is entered into voluntarily by the United States Environmental Protection Agency (EPA) and the following who are hereinafter referred to collectively as "Respondents": Huntsman Petrochemical Corporation ("Huntsman", formerly known as Huntsman Corporation), and Chevron Environmental Management Company ("CEMC"), for itself and on behalf of Texaco Incorporated. The Settlement Agreement requires that Respondents prepare and perform a remedial investigation and feasibility study ("RI/FS") for the Star Lake Canal Superfund Site in Jefferson County, Texas (the "Site"). Respondents must also reimburse EPA for Future Response Costs incurred in connection with the RI/FS, subject to the reservations of rights in Sections XXV and XXVI.

**II. JURISDICTION**

2. This Settlement Agreement is issued under the authority vested in the President of the United States by Sections 104, 107 and 122, of the Comprehensive Environmental Response,



Compensation, and Liability Act, as amended, 42 U.S.C. § 9604, 9407, and 9622 (CERCLA). This authority was delegated to the Administrator of EPA on January 23, 1987, by Executive Order 12580, 52 Fed. Reg. 2926 (1987); further delegated to Regional Administrators by EPA Delegation No. 14-2, Titled "Response", (November 8, 2001); and redelegated by the Regional Administrator to the Director, Superfund Division, by EPA Delegation No. R6-14-2 (March 21, 2002).

3. Respondents agree to undertake all actions required by the terms and conditions of this Settlement Agreement. EPA and Respondents recognize that this Settlement Agreement has been negotiated in good faith and that the actions undertaken by Respondents in accordance with this Settlement Agreement do not constitute an admission of any liability. In any action by EPA or the United States to enforce the terms of this Settlement Agreement and subject to the Dispute Resolution provisions of Section XX, Respondents consent to and agree not to contest the authority or jurisdiction of EPA to issue or enforce this Settlement Agreement, and agree not to contest the validity of this Settlement Agreement or its terms.

### **III. PARTIES BOUND**

4. This Settlement Agreement applies to and is binding upon EPA and upon Respondents, their agents, successors, and assigns. Respondents are jointly and severally responsible for carrying out all actions required of them by this Settlement Agreement. The signatories to this Settlement Agreement certify that they are authorized to execute this Settlement Agreement and legally bind the parties they represent to this Settlement Agreement. No change in the ownership or corporate status of each Respondent, or the Site, including any transfer of assets, shall alter each Respondent's responsibilities under this Settlement Agreement.

5. During the period this AOC is in effect, each Respondent must provide a copy of this Settlement Agreement to any subsequent owner or successor before ownership rights or stock or assets in a corporate acquisition are transferred. Respondents must provide a copy of this Settlement Agreement to all contractors, subcontractors, laboratories, and consultants retained to conduct any Work performed under this Settlement Agreement, within 14 days after the effective date of this Settlement Agreement or the date of retaining their services, whichever is later. Respondents must condition all such contracts upon satisfactory compliance with this Settlement Agreement. Notwithstanding the terms of any contract, each Respondent is responsible for compliance with this Settlement Agreement and for ensuring that its subsidiaries, employees, contractors, consultants, subcontractors and agents comply with this Settlement Agreement.

### **IV. STATEMENT OF PURPOSE**

6. In entering into this Settlement Agreement, the objectives of EPA and Respondents are: (a) to determine the nature and extent of contamination and any threat to the public health, welfare, or the environment caused by the release or threatened release of

hazardous substances, pollutants or contaminants at or from the Site, by conducting a remedial investigation; (b) to determine and evaluate alternatives for remedial action to prevent, mitigate or otherwise respond to or remedy any release or threatened release of hazardous substances, pollutants, or contaminants at or from the Site or facility, by conducting a feasibility study; (c) to provide for EPA to recover Future Response Costs incurred by EPA not inconsistent with the NCP with respect to this Settlement Agreement; (d) to provide Respondents with contribution protection as defined in Section XXVII and with a covenant not to sue as provided in Section XXV; and (e) to avoid protracted and expensive litigation.

7. The activities conducted under this Settlement Agreement are subject to approval by EPA and shall provide all appropriate necessary information for the RI/FS, and for a record of decision that is consistent with CERCLA and the National Contingency Plan (NCP), 40 C.F.R. Part 300. The activities conducted under this Settlement Agreement shall be conducted in compliance with all applicable EPA guidances, policies, and procedures.

8. EPA and Respondents acknowledge that some or all of the Respondents may hold other Permits. Each Respondent remains responsible for compliance with all of its permits and with this Settlement Agreement.

## V. DEFINITIONS

9. Unless otherwise expressly provided in this Settlement Agreement, terms used in this Settlement Agreement that are defined in CERCLA or in regulations promulgated under it will have the meaning assigned to them in CERCLA or the regulations. Whenever terms listed below are used in this Settlement Agreement, the following definitions apply:

"ARARs" means all applicable local, state, and Federal laws and regulations, and all "applicable requirements" or "relevant and appropriate requirements" as defined at 40 CFR § 300.5 and 42 U.S.C. § 9621(d).

"CERCLA" means the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9601 to 9675.

"Contaminant" has the definition at 42 U.S.C. § 9601(33); as used in this Settlement Agreement "contaminant" includes hazardous substances and pollutants. Reference to "contamination" includes media where any hazardous substance, pollutant, or contaminant has come to be located.

"Day" means a calendar day unless expressly stated to be a business or Working day. In computing any period of time under this Settlement Agreement, where the last day would fall on a Saturday, Sunday, or Federal holiday, the period runs until the end of the next day not a Saturday, Sunday, or Federal holiday.

"Deliverable" means any action, activity, task, or submission required to be done by the Respondents under this Settlement Agreement. A deliverable is Work.

"EPA" means the United States Environmental Protection Agency and its successor agencies.

"Future Response Costs" shall mean all costs not inconsistent with the NCP, including, but not limited to, direct costs, indirect costs, and accrued Interest (as defined herein) paid by the United States, subsequent to the effective date hereof, or the State at the direction of the EPA, in reviewing, developing plans, reports or other documents pursuant to this Settlement Agreement, verifying the Work, or otherwise overseeing, implementing or enforcing the Settlement Agreement, and activities performed by the government as part of the RI/FS and in development and implementation of a community relations plan and any revision thereto, time and travel costs of EPA personnel and associated indirect costs, contractor costs, costs pursuant to any State Cooperative Settlement Agreement, compliance monitoring, including the collection of and analysis of split samples, inspection of RI/FS activities, Site visits, discussions regarding disputes that arise under this Settlement Agreement, review and approval or disapproval of reports, costs of re-doing any of Respondents' tasks and costs of conducting activities pursuant to this Settlement Agreement on any portions of the Site to which Respondents were unable to gain Site access and any costs incurred to obtain access to properties as may be necessary to carry out activities required under this AOC.

"National Contingency Plan" or "NCP" means the National Oil and Hazardous Substances Pollution Contingency Plan promulgated under Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, including any amendments.

"Paragraph" means a portion of this Settlement Agreement identified by an Arabic numeral followed by a period. References to paragraphs in the Statement of Work (SOW) will also be so identified (for example, "SOW Paragraph 15").

"Performance Standards" means those cleanup standards, Work standards, standards of control, and other requirements, criteria, or limitations specified in the Settlement Agreement, including the SOW. Because EPA-approved submissions are an enforceable part of the Settlement Agreement, cleanup goals and other substantive requirements, criteria, or limitations specified in EPA-approved submissions are Performance Standards. EPA will use the Performance Standards to determine whether the Work required by the Settlement Agreement has been completed. Except where it is inconsistent with this Settlement Agreement, as determined by EPA, the RI/FS Guidance and the other EPA guidance cited in the Settlement Agreement are Performance Standards.

"Respondents" means the parties listed in Attachment A (List of Potentially Responsible

Parties) to this Settlement Agreement, and incorporated herein by reference.

"Requirements of this Settlement Agreement" or a similar term means: payments that Respondents are to make under this Settlement Agreement; Work that Respondents are to perform under this Settlement Agreement; scheduled deadlines that Respondents or EPA are to meet under this Settlement Agreement, including deadlines in schedules in EPA-approved submissions; and any other obligation of Respondents or EPA under this Settlement Agreement. It is a violation of this Settlement Agreement for Respondents to fail to perform a requirement of this Settlement Agreement.

"Schedule" means the list of RI/FS activities and Deliverables with dates for completion, prepared and submitted as a part of the RI/FS Work Plan in accordance with the SOW.

"Section" means a portion of this Settlement Agreement identified by a Roman numeral and includes one or more paragraphs. References to sections in the SOW will also be so identified (for example, "SOW Section V").

"Settlement Agreement" means this document, including the Statement of Work and all other attachments to this document and other documents expressly incorporated by reference into this document, and any EPA-approved submissions required under the terms of this document. EPA-approved submissions will be incorporated into and become a part of the Settlement Agreement upon final written approval by EPA.

"Site" means the Star Lake Canal Superfund Site as described in paragraph 10.

"State" means the State of Texas, including the Texas Commission on Environmental Quality and the State Natural Resource Trustees.

"Statement of Work" or "SOW" means the Statement of Work for the development of an RI/FS for the Site, as set forth in Attachment B to this Settlement Agreement. The Statement of Work is incorporated into this Settlement Agreement and is an enforceable part of this Settlement Agreement.

"Submission" means any written materials Respondents are required to produce under this Settlement Agreement, including correspondence, memoranda, notifications, plans, reports, specifications, and schedules. A submission is a Deliverable. Submissions include Work Plans and the schedules therein. Once EPA approves a submission in writing, the submission is incorporated into this Settlement Agreement and becomes an enforceable part of this Settlement Agreement.

"TCEQ" means the Texas Commission on Environmental Quality, formerly known as the Texas Natural Resources and Conservation Commission ("TNRCC").

"TNRCC" means the State of Texas agency formerly known as the Texas Natural Resources and Conservation Commission and which is now known as the Texas Commission on Environmental Quality ("TCEQ").

"Work" means all activities Respondents are required to perform under this Settlement Agreement. Work includes Deliverables.

"Work Plan" means a plan, to be developed by Respondents for EPA review and approval in accordance with the Statement of Work, that includes schedules for and descriptions of Work that Respondents will undertake under this Settlement Agreement.

## VI. EPA'S FINDINGS OF FACT

10. The Site consists of Molasses Bayou and two (2) industrial waste canals, the Star Lake Canal and the Jefferson Canal. The Site is located in Jefferson County, Texas, in and around the cities of Port Neches and Groves. The Site is defined as the lengths of the two industrial waste canals from their origins to the confluence of the Star Lake Canal with the Neches River. The straight line distance along the Star Lake Canal from its origin east of the intersection of Highway 136 and FM 366 to its confluence with the Neches River is approximately 16,500 feet. The straight line distance along the Jefferson Canal from its origin on the east side of Hogaboom Road south of FM 366 to its confluence with the Star Lake Canal north of the Hurricane Protection Levee is approximately 4,000 feet. The Groves Drainage Ditch extends several hundred feet between its origin south of FM 366 to its confluence with the Jefferson Canal at or near FM 366. Between Sara Jane Road 9 (aka Port Neches Avenue) and the river, the Star Lake Canal crosses marshes and intersects Molasses Bayou in two locations.

11. Historical unpermitted and permitted discharges (both in compliance with respective permits and in exceedance of, or in violation of, respective permits) into the Star Lake Canal and Jefferson Canal of hazardous substances from industrial processes have resulted in the deposition of the hazardous substances listed in Paragraphs 16 through 19 into and upon the sedimentary bottoms at the Site.

a. Industrial operations have taken place in areas surrounding the Site since the early 1940s. Initial construction of industrial facilities occurred under direction of the government of the United States during World War II, and subsequent operations have continued until the present time. Wastewater discharges from these operations were routed to the Site. The Jefferson Canal was constructed in the late 1940s as an industrial wastewater and stormwater outfall, and the Star Lake Canal was constructed after 1948 for the same purpose.

b. On or about February, 1983, the Jefferson County Drainage District Number 7 ("DD #7") dredged the Jefferson Canal by drag-line after having acquired an easement on the canal from Texaco Chemical Company, which owned the canal at that time. DD #7 deposited the dredge spoil, which was later found to be contaminated with hazardous substances listed in

Paragraphs 16 through 19, onto the banks of Jefferson Canal in and around an area below FM Road 366.

12. Chevron Environmental Management Company is a wholly-owned subsidiary of ChevronTexaco Corporation, the parent corporation of Texaco Inc. as a result of a merger in October 2001. Texaco Inc. was the parent corporation of Texaco Chemical Company ("TCC") until TCC was sold to Huntsman Corporation (n/k/a Huntsman Petrochemical Corporation) in April 1994. TCC was a successor in interest to various entities that operated what are now called the C4 and Oxides and Olefins Plants in Port Neches, Texas, and which owned all or part of Star Lake and Jefferson Canals.

13. Huntsman Petrochemical Corporation ("Huntsman") is the current owner of the Star Lake Canal and a portion of the Jefferson Canal. Huntsman acquired such ownership in April 1994 when it purchased TCC. As a result of that 1994 acquisition, Huntsman also acquired the C4 and Oxides and Olefins Plants in Port Neches.

14. Ameripol Synpol Corporation ("Ameripol") is the current owner of a portion of the west-east segment of the Star Lake Canal. On December 17, 1992, The Uniroyal Goodrich Tire Company conveyed its interest in the Uniroyal Goodrich Tire Company's Port Neches Plant, which includes a solid waste landfill and the west-east segment of the Star Lake Canal to Ameripol. Numerous other industrial facilities have conducted operations that have had an impact on the Star Lake Canal, the Jefferson Canal and the Site generally over the years.

15. On March 21, 1983, and March 23, 1983, the Texas Department of Water Resources collected sediment samples from Jefferson Canal, as well as Jefferson Canal dredge spoil samples and rainfall runoff from such dredge spoil, and observed such samples to have a strong aromatic odor characteristic of phenolic compounds. On March 23, 1983, a Texas Department of Water Resources inspection observed rainfall runoff from dredge spoils along the Jefferson Canal bank entering Jefferson Canal. A further review of state records indicates that sampling of dredged spoils from Jefferson Canal sediments documented the presence of the following contaminants: naphthalene, acenaphthene, acenaphthylene, fluorene, phenanthrene, anthracene, pyrene, benzo(a)anthracene, benzo-b-fluoranthene, benzo(a)pyrene, benzo-a-fluoranthene, chrysene. Property adjacent to the Jefferson Canal may be contaminated with toxaphene and possibly pentachlorophenol.

16. A TNRCC Screening Site Inspection ("SSI") Report of the Star Lake Canal, dated September, 1997, states that the following contaminants were detected in samples collected from the Jefferson Canal and the Star Lake Canal: acenaphthene, acenaphthylene, anthracene, arsenic, barium, benzo(b)fluoranthene, benzo(k)fluoranthene, cyanide, fluoranthene, fluorene, mercury, 2-methylnaphthalene, naphthalene, aroclor-1254 (a polychlorinated biphenyl, "PCB"), phenanthrene, pyrene, and thallium. A table of organic contaminants in the samples contains a hand-written entry that states benzo(a)anthracene, chrysene, and benzo(a)pyrene were also detected. Releases of ten of the above-mentioned substances were detected in downstream

samples. The farthest downstream, contaminated sample, taken in the Star Lake Canal approximately 0.29 miles upstream of the confluence of the Star Lake Canal with the Neches River, indicated detectable concentrations of thallium.

17. A TNRCC Expanded Site Inspection ("ESI") Report for the Star Lake Canal Site, dated January, 1999, includes other contaminants not listed in the September, 1997, TNRCC SSI report. These contaminants include the following: acetone, aldrin, benzene, benzo(g,h,i)pyrene, chromium, copper, 4,4'-DDD, endosulfan I, ethylbenzene, heptachlor epoxide, indeno(1,2,3-cd)pyrene, selenium, silver, styrene, toluene, and total xylenes. However, there were four contaminants previously reported in TNRCC's September, 1997, SSI report which were not reported in TNRCC's January, 1999, ESI report. These four contaminants are as follows: arsenic, barium, cyanide, and mercury.

18. State enforcement investigations conducted during the 1970's focused on pentachlorophenol and toxaphene contamination in the Jefferson Canal. State enforcement action in 1983 identified that toxaphene contaminated sediments may have been dredged from the Jefferson Canal and placed on its banks. A 1983 analytical report for a sample collected from the dredged sediments of the Jefferson Canal's banks indicated that detectable levels of the following contaminants were then present: toxaphene, acenaphthene, acenaphthylene, anthracene, benzo(a)anthracene, benzo(p)pyrene, benzo(b)fluoranthene, chrysene, fluoranthene, fluorene, naphthalene, phenanthrene, pyrene, and biphenyls.

19. On July 22, 1999, the EPA proposed adding the Star Lake Canal Site to the National Priorities List. Pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, on August 28, 2000, the Site was subsequently added to the National Priorities List (NPL), 40 C.F.R. Part 300, App. B.

## **VII. EPA'S CONCLUSIONS OF LAW AND DETERMINATIONS**

20. The Site is a "facility" as defined in Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

21. Substances at the Site and released or threatened to be released at the Site, including the substances described in Paragraphs 16 through 19, and the constituents thereof, are "hazardous substances" as defined in Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

22. The presence of hazardous substances at the Site or the past, present or potential migration of hazardous substances at or emanating from the Site, constitute actual and/or threatened "releases" as defined in Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

23. Each Respondent is a "person" as defined in Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).



24. Respondents are potentially responsible parties under Sections 104, 107 and 122 of CERCLA, 42 U.S.C. §§ 9604, 9607 and 9622.

25. The Site conditions described in the EPA Findings of Fact above constitute an actual or threatened release of a hazardous substance from the facility as defined by Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

26. The actions required by this Settlement Agreement are necessary to protect the public health or welfare or the environment, are in the public interest, 42 U.S.C. § 9622(a), are consistent with CERCLA and the NCP, 42 U.S.C. §§ 9604(a)(1), 9622(a), and will expedite effective remedial action and minimize litigation, 42 U.S.C. § 9622(a). If carried out in compliance with the terms of this Settlement Agreement, the actions conducted will be considered consistent with the NCP, as provided in Section 300.700(c)(3)(ii) of the NCP.

### VIII. NOTICE

27. By providing a copy of this Settlement Agreement to the State of Texas, EPA is notifying the State that this Settlement Agreement is being issued and that EPA is the lead agency for coordinating, overseeing, and enforcing the response action required by the Settlement Agreement.

### IX. WORK TO BE PERFORMED

28. All Work performed under this Settlement Agreement must be under the direction and supervision of qualified personnel. Within 30 days of the effective date of this Settlement Agreement, and before the Work outlined below begins, Respondents shall notify EPA in writing of the names, titles, and qualifications of the personnel, including contractors, subcontractors, consultants and laboratories to be used in carrying out the Work. The qualifications of the persons undertaking the Work for Respondents shall be subject to EPA's review, for verification that such persons meet minimum technical background and experience requirements. This Settlement Agreement is contingent on Respondents' demonstration to EPA's satisfaction that Respondents are qualified to perform properly and promptly the actions set forth in this Settlement Agreement. If EPA disapproves in writing of any person's qualifications, Respondents shall notify EPA of the identity and qualifications of the replacement within 30 days of the written notice. If EPA subsequently disapproves of the replacement, EPA reserves the right to terminate this Settlement Agreement and to conduct a complete RI/FS, and to seek reimbursement for costs and penalties from Respondents. During the course of the RI/FS, Respondents shall notify EPA in writing of any changes or additions in the personnel used to carry out such Work, providing their names, titles, and qualifications. EPA shall have the same right to approve changes and additions to personnel as it has hereunder regarding the initial notification.

29. Respondents shall perform the Work described in this Settlement Agreement

including without limitation the Remedial Investigation and Feasibility Study Statement of Work (RI/FS SOW, or SOW, Attachment B) and any EPA-approved submissions. Respondents shall conduct activities and submit Deliverables as provided by the SOW. All such Work must be conducted in accordance with CERCLA; the NCP; EPA guidance, including the "Interim Final Guidance for Conducting Remedial Investigations and Feasibility Studies under CERCLA" (OSWER Directive # 9355.3-01), guidance documents referenced therein, and guidance documents referenced in the RI/FS SOW, as may be amended or modified by EPA; the RI/FS SOW; the standards, specifications and other requirements of Work Plans and sampling and analysis plan approved by EPA; and schedules approved by EPA.

30. All major deliverables (as listed in Paragraph 29) that Respondents submit to EPA must contain the following statement, signed by Respondents' Project Coordinator (as named and approved under Paragraph 28):

To the best of my knowledge, after thorough investigation, I certify that the information contained in or accompanying this submission is true, accurate and complete. As to those identified portions of this submission for which I cannot personally verify the truth and accuracy, I certify as the official having supervisory responsibility for the person(s) who, acting under my direct instructions, made the verification that this information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

31. Whenever this Settlement Agreement requires a submission to EPA, the submission must be signed by Respondents' Project Coordinator. Notwithstanding such a delegation of responsibility, each Respondent remains liable for the proper performance of the Work required by this Settlement Agreement.

32. EPA reserves the right to comment on, modify and direct changes for all Deliverables. At EPA's discretion, Respondents must fully correct all deficiencies and incorporate and integrate all information and comments supplied by EPA either in subsequent or resubmitted Deliverables.

33. Respondents shall not proceed further with any subsequent activities or tasks until receiving EPA approval for the following Deliverables: RI/FS Work Plan and sampling and analysis plan, baseline risk assessment chapter of the remedial investigation report, draft remedial investigation report, treatability testing Work Plan and sampling and analysis plan (unless EPA determines treatability studies are not needed after Respondents have demonstrated such to EPA's satisfaction), and draft feasibility study report. While awaiting EPA approval on these Deliverables, Respondents shall proceed with all other tasks and activities which may be conducted independently of these Deliverables, in accordance with the schedule set forth in this Settlement Agreement.

34. For all remaining Deliverables not enumerated above in paragraph 31, unless otherwise specified in the attached RI/FS SOW, Respondents shall proceed with all subsequent tasks, activities and Deliverables without awaiting EPA approval on the submitted deliverable in accordance with the schedule contained in the SOW or other schedules approved by EPA. EPA reserves the right to stop Respondents from proceeding further, either temporarily or permanently, on any task, activity or deliverable at any point during the RI/FS.

35. After review of any submission, EPA may: (a) approve (in whole or in part) the submission; (b) approve the submission but require modifications, which may include deletions or additions prepared by EPA, which Respondents must incorporate into the text of the submission as directed by EPA in writing; (c) disapprove (in whole or in part) the submission and direct Respondents to resubmit the submission after incorporating EPA's modifications, which may include deletions or additions prepared by EPA, which Respondents must incorporate into the text of the submission exactly as directed by EPA in writing; (d) disapprove the submission and assume responsibility for performing all or any part of the RI/FS; or (e) any combination of the above. Once approved by EPA in writing, and subject to the result of any dispute resolution, a submission or an approved portion of a submission is incorporated into and fully enforceable under this Settlement Agreement, and Respondents must proceed to take any action required by the submission.

36. In the event that Respondents amend or revise a report, plan or other submittal upon receipt of EPA comments, if EPA subsequently disapproves of the revised submittal, or if subsequent submittals do not fully reflect EPA's directions for changes, EPA retains the right to seek stipulated or statutory penalties; perform its own studies, complete the RI/FS (or any portion of the RI/FS) under CERCLA and the NCP, and seek reimbursement from the Respondents for its costs; and/or seek any other appropriate relief.

37. Upon receipt of a notice of disapproval or approval with modifications, Respondents must correct the deficiencies and resubmit the submission for approval within the reasonable time specified by EPA in its notice of disapproval or approval with modifications. Notwithstanding the notice of disapproval or approval with modifications, Respondents must proceed, at the written direction of EPA, to take any action required by any non-deficient portion of the submission.

38. If, on resubmission by Respondents, EPA again disapproves a previously disapproved submission, EPA may deem the submission untimely and inadequate, and subject to the results of dispute resolution stipulated penalties will begin to accrue. EPA also retains the right to perform its own studies, complete the RI/FS (or any portion of the RI/FS) under CERCLA and the NCP, and seek reimbursement from Respondents for its costs, and to seek any other appropriate relief.

39. In the event that EPA takes over some of the tasks, but not the preparation of the RI/FS, Respondents shall incorporate and integrate information supplied by EPA into the final

RI/FS report.

40. Failure of EPA to comment on, approve of, or disapprove of Respondents' submissions within a specified period will not constitute approval by EPA. Any failure by EPA to comment on, approve or disapprove any submission before the scheduled date of commencement of Work, when approval is required by that date under the terms of the SOW, operates to extend the Schedule until EPA so acts. In such an instance, the Schedule will be extended by the number of days between the date approval was required and the date EPA acts. Whether or not EPA gives express approval for Respondents' Deliverables, Respondents are responsible for preparing Deliverables acceptable to EPA.

## **X. EPA'S RISK ASSESSMENTS**

41. The Respondents shall perform the baseline human health risk assessment and the ecological risk assessment as specified in the RI/FS SOW (Attachment B).

42. Respondents will prepare a risk assessment report based on the data collected during the site characterization. After considering any significant comments received, EPA will release the report to the public at the same time it releases the final RI report. Both reports will be put into the administrative record for the site.

43. EPA will respond to all significant comments on the memoranda or the risk assessment that are resubmitted during the formal comment period on the Proposed Plan in the Responsiveness Summary of the record of decision.

## **XI. MODIFICATION OF THE WORK PLAN**

44. If at any time during the implementation of this Settlement Agreement Respondents identify a need for additional data, a memorandum documenting the need for additional data shall be submitted to the EPA Remedial Project Manager ("RPM") within 30 days of identification. EPA in its discretion, after consultation with Respondents' Project Coordinator, will determine whether the additional data will be collected by Respondents and whether it will be incorporated into reports and Deliverables.

45. In the event of conditions posing an immediate threat to human health or welfare or the environment, Respondents shall notify EPA and the State immediately. In addition to its authority under the NCP, if EPA determines that the immediate threat or the unanticipated or changed circumstances warrant changes in the Work Plan, EPA may modify or amend the Work Plan in writing accordingly. Respondents shall perform the Work Plan as modified or amended and approved by EPA.

46. In the event of unanticipated or changed circumstances at the Site that may affect conduct of the Work or the schedule under this Settlement Agreement, Respondents shall notify

the EPA Project Coordinator by telephone as soon as practicable, or no longer than three (3) days from discovery of the unanticipated or changed circumstances. EPA and Respondents' Project Coordinator shall discuss the unanticipated or changed circumstances as soon as practicable, and, if they determine that changes to the Work Plan are necessary, EPA shall modify or amend the Work Plan in writing accordingly. Respondents shall perform the Work Plan as modified or amended.

47. EPA may determine that, in addition to tasks defined in the initially approved Work Plan, other Work may be necessary to accomplish the objectives of the RI/FS as set forth in the Statement of Work. EPA may require that Respondents perform such Work in addition to the Work required by the initially approved Work Plan, including any approved modifications, if it determines that such actions are necessary for a complete RI/FS. Respondents must confirm their willingness to perform the additional Work in writing to EPA within thirty (30) days of receipt of the EPA request, or Respondents shall invoke dispute resolution. Subject to resolution of any dispute under Section XX of this Settlement Agreement, Respondents shall implement the additional tasks that EPA determines are necessary. The additional Work must be completed according to the standards, specifications, and schedule set forth or approved by EPA in a written modification to the Work Plan or written Work Plan supplement. EPA reserves the right to conduct the Work itself at any point, to seek reimbursement from Respondents, and/or to seek any other appropriate relief.

## **XII. EMERGENCY RESPONSE AND NOTIFICATION OF RELEASES**

48. If activities conducted under this Settlement Agreement cause or threaten to cause a release of hazardous substances, pollutants, or contaminants from the Site that presents or may present an endangerment to the public health, welfare, or the environment, Respondents must immediately take all appropriate action to prevent, abate or minimize the release and endangerment caused or threatened by the release. Respondents must take these actions in accordance with all applicable provisions of this Settlement Agreement, including the Health and Safety Plan. In addition to notifications otherwise required by law, Respondents also must immediately notify the RPM of the incident and related Site conditions. In addition, Respondents must submit a written report to EPA within seven (7) days after each release, setting forth the events that occurred and the measures taken or to be taken to mitigate the release or endangerment caused or threatened by the release and to prevent the recurrence of such an event.

## **XIII. QUALITY ASSURANCE**

49. Respondents must ensure that Work performed, samples taken and analyses conducted conform to the requirements of the Statement of Work and guidance documents identified therein. Respondents shall assure that field personnel used by Respondents are properly trained in the use of field equipment and in chain of custody procedures.

50. To provide quality assurance and maintain quality control regarding all samples

collected pursuant to this Settlement Agreement, Respondents must:

- (a) Ensure that all contracts with laboratories utilized by Respondents for analysis of samples taken in accordance with this Settlement Agreement provide for access of EPA personnel and EPA authorized representatives.
- (b) Ensure that all laboratories utilized by Respondents for analysis of samples taken in accordance with this Settlement Agreement perform analyses according to EPA methods or alternative methods satisfactory to EPA.
- (c) Ensure that all laboratories utilized by Respondents for analysis of samples taken in accordance with this Settlement Agreement participate in an EPA or EPA-approved QA/QC program or alternative methods as determined by EPA. As part of the QA/QC program and upon request by EPA, such laboratories must perform, at no expense to EPA, analyses of samples provided by EPA to demonstrate the quality of each laboratory's data.

#### **XIV. FINAL RI/FS, PROPOSED PLAN, PUBLIC COMMENT, RECORD OF DECISION, ADMINISTRATIVE RECORD**

51. EPA retains the responsibility for the release to the public of the RI/FS report. EPA retains responsibility for the preparation and release to the public of the proposed plan and record of decision in accordance with CERCLA and the NCP.

52. EPA shall provide Respondents with the final proposed plan and record of decision. Any significant comments of Respondents timely submitted to the Proposed Plan and record of decision shall be included in the administrative record.

53. EPA will determine the contents of the administrative record file for selection of the remedial action. Respondents must submit to EPA documents developed during the course of the RI/FS upon which selection of the response action may be based. Respondents shall provide copies of plans, task memoranda including documentation of field modifications, recommendations for further action, quality assurance memoranda and audits, raw data, field notes, laboratory analytical reports and other reports. Respondents must additionally submit any previous studies conducted under state, local or other federal authorities relating to selection of the response action, and all communications between Respondents and state, local or other federal authorities concerning selection of the response action. At EPA's discretion, Respondents may establish a community information repository at or near the site, to house one copy of the administrative record.

#### **XV. PROGRESS REPORTS AND MEETINGS**

54. Project Coordinators for Respondents and EPA shall meet regularly during the

initiation, conduct, and completion of all activities under this Settlement Agreement, to discuss general Site progress, anticipated problems, and new issues, including EPA policies, guidance and procedures affecting the tasks and activities conducted under this Settlement Agreement. Additional meetings may be scheduled at EPA's discretion or upon request of Respondents.

55. In addition to the Deliverables set forth in this Settlement Agreement, Respondents must provide to EPA monthly progress reports by the 15<sup>th</sup> day of the following month. At a minimum, with respect to the preceding month, these progress reports must: (1) describe the actions taken to comply with this Settlement Agreement during that month; (2) include all results of sampling and tests and all other data received by Respondents; (3) describe Work planned for the next two months with schedules relating such Work to the overall project schedule for RI/FS completion; and (4) describe all problems encountered and any anticipated problems, any actual or anticipated delays, and solutions developed and implemented to address any actual or anticipated problems or delays.

56. If EPA determines that any monthly report is deficient, the RPM will notify Respondents' Project Coordinator within 10 days of receipt of the monthly report. Respondents must submit a revised monthly report within 20 days after receipt of notice of deficiency unless EPA allows additional time for response.

#### **XVI. SAMPLING, ACCESS, AND DATA AVAILABILITY/ADMISSIBILITY**

57. All results of sampling, tests, modeling or other data (including raw data) generated by Respondents, or on Respondents' behalf, during implementation of this Settlement Agreement, shall be submitted to EPA in the subsequent monthly progress report as described in Section XV of this Settlement Agreement. EPA will make available to the Respondents validated data generated by EPA unless it is exempt from disclosure by any federal or state law or regulation.

58. Respondents must orally notify EPA at least 15 days prior to conducting significant field events as described in the Statement of Work, Work Plan, or sampling and analysis plan. At EPA's oral or written request, or the request of EPA's oversight contractor, Respondents must allow split or duplicate samples to be taken by EPA (and its authorized representatives) or the State (and their authorized representatives) of any samples collected by Respondents in implementing this Settlement Agreement. All split samples of Respondents shall be analyzed by the methods identified in the QAPP or SOW.

59. Pursuant to applicable access agreements and all applicable safety requirements, at all reasonable times EPA and its authorized representatives have the authority to enter the property at the Site and off-site areas where Work is being performed for these purposes:

- inspecting conditions, activities, the results of activities, records, operating logs, and contracts related to the Site or Respondents and its contractor pursuant to this

Settlement Agreement;

- reviewing the progress of the Respondents in carrying out the terms of this Settlement Agreement;

- conducting tests as EPA or its authorized representatives deem necessary;

- using a camera, sound recording device or other documentary type equipment; and verifying the data submitted to EPA by Respondents.

A. The Respondents shall allow these persons to inspect and to designate copies of non-privileged records, files, photographs, documents, sampling and monitoring data, and other writings related to Work undertaken in carrying out this Settlement Agreement. Respondent shall provide copies of such designated materials to these persons as soon as practicable. Nothing herein may be interpreted as limiting or affecting EPA's right of entry or inspection authority under federal law. All parties with access to the Site under this paragraph must comply with all applicable health and safety plans.

B. Respondents may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If the Respondents assert such a privilege in lieu of providing documents, they shall provide EPA and the State with the following: 1) the title of the document, record, or information; 2) the date of the document, record, or information; 3) the name and title of the author of the document, record, or information; 4) the name and title of each addressee and recipient; 5) a description of the contents of the document, record, or information; and 6) the privilege asserted by Respondents. However, no documents, reports or other information created or generated pursuant to the requirements of this Order shall be withheld on the grounds that they are privileged.

60. Respondents may assert a claim of business confidentiality covering part or all of the information submitted to EPA in accordance with the terms of this Settlement Agreement under 40 C.F.R. § 2.203, provided such claim is allowed by Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7). This claim must be asserted in the manner described by 40 C.F.R. § 2.203(b). Information determined to be confidential by EPA will be given the protection specified in 40 C.F.R. Part 2. If no such claim accompanies the information when it is submitted to EPA, it may be made available to the public by EPA or the state without further notice to Respondents. Respondents agree not to assert confidentiality claims with respect to any data generated under this Settlement Agreement related to site conditions, sampling, or monitoring.

61. In entering into this Settlement Agreement, Respondents waive any objections to any data gathered, generated, or evaluated by EPA, the State or Respondents in the performance or oversight of the work that has been verified according to the quality performance or oversight of the work that has been verified according to the quality assurance/quality control (QA/QC)



procedures required by this Settlement Agreement or any EPA-approved work plans or sampling and analysis plans. If Respondents object to any other data relating to the RI/FS, Respondents must submit to EPA a report that identifies and explains its objections, describes the acceptable uses of the data, if any, and identifies any limitations to the use of the data. If Respondents subsequently discover error(s) in the data, Respondents have the right to withdraw the prior waiver of objections pertaining to those data. Respondents must submit a report that identifies and explains the objections, describes the acceptable uses of the data, if any, and identifies any limitations to the use of the data. The report must be submitted to EPA within 15 days after discovery of the error.

62. If the Site, or an off-site area that is to be used for access or is within the scope of the RI/FS, is owned in whole or in part by parties other than those bound by this Settlement Agreement, Respondents must obtain, or use their best efforts to obtain, site access Settlement Agreements from the present owner(s) within 60 days of the effective date of this Settlement Agreement. Such Settlement Agreements must provide access for EPA, its contractors and oversight officials, the State and its contractors, and Respondents or their authorized representatives, and must specify that Respondents are not EPA's representatives with respect to liability associated with Site activities. Copies of such Settlement Agreements shall be provided to EPA prior to Respondents' initiation of field activities. Respondents' best efforts shall include providing reasonable compensation to any off-site property owner not identified by EPA as a PRP in connection with the Site. If access Settlement Agreements are not obtained within the time referenced above, Respondents must immediately notify EPA of their failure to obtain access. EPA may obtain access for Respondents, perform those tasks or activities with EPA contractors, or terminate the Settlement Agreement in the event that Respondents cannot obtain access Settlement Agreements. So long as Respondents are using reasonable best efforts to obtain access, EPA shall not seek penalties, stipulated or otherwise, for any delay occasioned by the inability to obtain access. In the event that EPA performs those tasks or activities with EPA contractors and does not terminate the Settlement Agreement, Respondents must perform all other activities not requiring access to that Site, and must reimburse EPA for all costs incurred in performing the activities. Respondents additionally must integrate the results of any such tasks undertaken by EPA into its reports and Deliverables. Respondents also must reimburse EPA for all costs and attorney fees incurred by the United States to obtain access for the Respondents from property owner(s).

## **XVII. DESIGNATED PROJECT COORDINATORS**

63. On or before the effective date of this Settlement Agreement, Respondents must designate a Project Coordinator, who will be responsible for administering all of Respondents' Work required by the Settlement Agreement. Respondents must submit the designated Project Coordinator's name, address, telephone number, and qualifications to EPA. To the greatest extent possible, during Work on the Site the Project Coordinator must be present at the Site or readily available. EPA retains the right to at any time disapprove of any Project Coordinator selected by Respondents. If EPA disapproves in writing of a selected Project Coordinator,

Respondents must designate a new Project Coordinator and notify EPA of that person's name, address, telephone number, and qualifications within seven days following EPA's disapproval.

64. Respondents have the right to change their Project Coordinator. At least seven days before the change, EPA must be notified in writing of the designated Project Coordinator's name, address, telephone number, and qualifications.

65. EPA will designate a Remedial Project Manager (RPM) for the Site. EPA's RPM shall have the authority lawfully vested in an RPM and On-Scene Coordinator (OSC) by the NCP. In addition, the RPM shall have the authority, consistent with the NCP, to halt any Work required by this Settlement Agreement, and to take any necessary response action upon determining that conditions at the site may present an immediate and substantial endangerment to public health or welfare or the environment. The absence of the RPM from the area under study pursuant to this Settlement Agreement is not cause for the stoppage or delay of Work. EPA has the right to change its designated RPM. Respondents must be notified of the change in writing

66. To the greatest extent possible, communications between Respondents and EPA should be directed to the Project Coordinator and RPM in writing. Communications include all documents, reports, notices, approvals, and other correspondence submitted under this Settlement Agreement and as specified in the RI/FS SOW (Attachment B). All communications submitted under this Settlement Agreement must be directed as follows:

(a) Documents to be submitted to EPA should be sent to:

Mr. Philip Allen (Remedial Project Manager)  
U.S. Environmental Protection Agency, Region 6  
Superfund Division (6SF-AP)  
1445 Ross Avenue, Suite 1200  
Dallas, TX 75202-2733  
Telephone # - (214) 665-8516  
E-Mail Address - allen.philip@epa.gov

and any other addresses designated by EPA in the RI/FS SOW (Attachment B).

(b) Documents to be submitted to Respondents should be sent to:

Gary Jacobson  
CEMC  
5959 Corporate Drive  
Houston, Texas 77036

Lon Tullos, Manager - Environmental  
Manager - EHS Financial and Legacy Matters  
Huntsman LLC  
10003 Woodloch Forest Drive  
The Woodlands, TX 77380

Respondents must notify EPA in writing of any change in this address.

67. EPA may arrange for a qualified person to assist in its oversight and review of the conduct of the RI/FS, as required by Section 104(a) of CERCLA, 42 U.S.C. § 9604(a). The oversight assistant may observe Work and make inquiries in the absence of EPA, but is not authorized to modify the Work Plan.

### **XVIII. OTHER APPLICABLE LAWS**

68. Respondents shall comply with all applicable local, state, and federal laws and regulations when performing the RI/FS. No local, state, or federal permit is required for any portion of any action conducted entirely on-Site, including studies, if the action is selected and carried out in compliance with Section 121 of CERCLA.

### **XIX. RECORD PRESERVATION**

69. All records and documents in EPA's and Respondents' possession that relate in any way to the conduct of Work under this Settlement Agreement must be preserved for the duration of this Settlement Agreement and for a minimum of 10 years after commencement of construction of any remedial action. Respondents must acquire and retain copies of all documents that relate to the Site and are in the possession of its employees, agents, accountants, contractors, or attorneys. After this 10-year period, if EPA requests that the documents be saved, Respondents must, at no cost to EPA, give EPA the documents or copies of the documents.

### **XX. DISPUTE RESOLUTION**

70. Any disputes concerning activities or Deliverables required under this Settlement Agreement shall be resolved as follows:

- (a) The Project Coordinators and the RPM shall first attempt to resolve all matters in dispute expeditiously and informally. The initial period for informal dispute resolution shall not exceed twenty (20) business days from the time that the dispute arises. The period for informal dispute resolution may be modified by written Settlement Agreement of the parties to the dispute.
- (b) If a matter in dispute has not been resolved informally, and the Respondents object to any ~~EPA notice of disapproval or requirement made pursuant to this Settlement Agreement,~~ Respondents shall notify EPA's Project Coordinator in writing of its objections within twenty (20) business days of receipt of the disapproval notice or requirements. Respondents' written objections shall define the dispute and state the basis of Respondents' objections. Respondents' obligations under this Settlement Agreement shall not be tolled by submission of any objection for dispute resolution under this Section. EPA and the Respondents shall have an additional fourteen (14) business days

from Respondents' written objections to resolve the dispute through formal negotiations (the "Negotiation Period"). The Negotiation Period may be extended at the sole discretion of EPA.

- (c) Any Settlement Agreement reached by the parties or decision by EPA pursuant to this Section shall be in writing and shall, upon signature by both parties, be incorporated into and become an enforceable part of this Settlement Agreement. If the parties are unable to reach Settlement Agreement within the Negotiation Period, an EPA management official at the Division Director level will issue a written decision, including his or her reasons, that shall be based on consideration of the information exchanged by the parties on the dispute. EPA's decision shall be incorporated into and become an enforceable part of this Settlement Agreement, and that decision shall constitute final agency action.
- (d) If an Settlement Agreement is not reached within the 14 day Negotiation Period, Respondents may request a determination by EPA's Director of the Superfund Division, EPA Region 6 ("Division Director"). The Division Director's determination is EPA's final decision. Respondents must proceed in accordance with EPA's final decision. Following resolution of the dispute, as provided by this Section, Respondents shall fulfill the requirement that was the subject of the dispute in accordance with the Settlement Agreement reached or with EPA's decision. If the Respondents do not agree to perform or do not actually perform the work in accordance with EPA's final decision, EPA reserves the right in its sole discretion to conduct the work itself, to seek reimbursement from Respondents, to seek enforcement of the decision, to seek stipulated penalties, and/or to seek any other appropriate relief.
- (e) Unless EPA agrees otherwise in writing, Respondents are not relieved of their obligations to perform and conduct activities and submit Deliverables on the schedule set forth in the Work Plan while a matter is pending in dispute resolution. The invocation of dispute resolution shall stay the accrual of stipulated penalties during the period beginning on the 14th day after the Negotiation Period begins until the date that the Director of the Superfund Division issues a final decision regarding such dispute. Penalties shall continue to accrue as provided in this paragraph during any dispute resolution period, but need not be paid until 15 days after the dispute is resolved by Settlement Agreement or by receipt of EPA's decision.

## **XXI. DELAY IN PERFORMANCE/STIPULATED PENALTIES**

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71. The EPA shall provide written notice to Respondents in accordance with the Settlement Agreement of any failure to complete a deliverable in a timely manner, to produce a deliverable of acceptable quality, or otherwise to perform in accordance with the requirements of this Settlement Agreement. If Respondents do not, within twenty (20) days of receipt of the notice, either cure such default or invoke the Dispute Resolution procedures set forth in Section XX, then Respondents shall be liable for stipulated penalties. Penalties begin to accrue on the

twenty-first (21<sup>st</sup>) day from receipt of such notice from the EPA. However, no penalties shall accrue during the Dispute Resolution process of Section XX. All such penalties set forth in this section are discretionary by the EPA and may be waived upon production of the deliverable or compliance with this Settlement Agreement. Payment shall be due within 30 days of receipt of a demand letter from EPA, unless Respondents invoke the dispute resolution process.

72. Respondents must pay interest on the unpaid balance, which shall begin to accrue at the end of the 30-day period, at the rate established by the Department of Treasury in accordance with 30 U.S.C. § 3717. Respondents must further pay a handling charge of 1 percent, to be assessed at the end of each 31 day period, and a 6 percent per annum penalty charge, to be assessed if the penalty is not paid in full within 90 days after it is due.

73. Respondents must make all payments by forwarding a check to:

Mellon Bank  
EPA Superfund – Star Lake Canal Superfund Site (06GY)  
CERCLIS #: TX0001414341  
Cincinnati Accounting Operation – Region 6  
P.O. Box 371099M  
Pittsburgh, Pennsylvania 15251

Checks should identify the name of the site, the site identification number, the account number, and the title of this Settlement Agreement. A copy of the check and any transmittal letter must be forwarded to the RPM.

74. For the following major Deliverables, stipulated penalties shall accrue in the amount of \$500 per day, per violation, for the first seven (7) days of noncompliance; \$1,000 per day, per violation, for the 8<sup>th</sup> through 14<sup>th</sup> days of noncompliance; \$2,000 per day, per violation, for the 15<sup>th</sup> through 30<sup>th</sup> days of noncompliance; and \$3,000 per day, per violation, for all violations lasting beyond 30 days.

- 1) An original and any revised Work Plan.
- 2) An original and any revised sampling and analysis plan.
- 3) An original and any revised remedial investigation report.
- 4) An original and any revised treatability testing Work Plan.
- 5) An original and any revised treatability study sampling and analysis plan.
- 6) An original and any revised feasibility study report.

7) An original and any revised risk assessment report.

75. For all other Deliverables, stipulated penalties will accrue in the amount of \$250 per day, per violation, for the first seven (7) days of noncompliance; \$500 per day, per violation, for the 8<sup>th</sup> through 14<sup>th</sup> days of noncompliance; \$1,000 per day, per violation, for the 15<sup>th</sup> through 30<sup>th</sup> days of noncompliance; and \$2,000 per day, per violation, for all violations lasting beyond 30 days.

76. For the monthly progress reports, stipulated penalties shall accrue in the amount of \$500 per day, per violation, for the first 7 days of noncompliance; \$1,000 per day, per violation, for the 8<sup>th</sup> through 14<sup>th</sup> days of noncompliance; \$2,000 per day, per violation, for the 15<sup>th</sup> through 30<sup>th</sup> days of noncompliance; and \$3,000 per day, per violation, for all violations lasting beyond 30 days.

77. Respondents may dispute EPA's right to penalties by invoking the dispute resolution procedures under Section XX. Penalties shall accrue but need not be paid during the dispute resolution period. If Respondents do not prevail upon resolution, all penalties shall be due to EPA within 30 days of resolution of the dispute. If Respondents prevail upon resolution, no penalties shall be paid.

78. In the event that EPA provides for corrections to be reflected in the next deliverable and does not require resubmission of that deliverable, stipulated penalties for that interim deliverable shall not accrue. Further, should Respondents disagree with any required modification, addition, or amendment, Respondents may invoke the dispute resolution procedure found in Section XX of this Settlement Agreement. Finally, no penalty for failure to submit any deliverable or for any failure to perform in accordance with this Settlement Agreement shall result in the imposition of any penalty if such failure to act is based upon any force majeure event.

79. The stipulated penalties provisions do not preclude EPA from pursuing any other remedies or sanctions which are available to EPA because of Respondents' failure to comply with this Settlement Agreement, including but not limited to conduct of all or part of the RI/FS by EPA. Payment of stipulated penalties does not alter Respondents' obligation to complete performance under this Settlement Agreement.

## **XXII. FORCE MAJEURE**

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80. "Force majeure," for purposes of this Settlement Agreement, is defined as any event arising from causes entirely beyond the control of Respondents and of any entity controlled by Respondents, including their contractors and subcontractors, that delays the timely performance of any obligation under this Settlement Agreement notwithstanding Respondents' best efforts to avoid the delay. The requirement that Respondents exercise "best efforts to avoid the delay" includes using best efforts to anticipate any potential force majeure event and best

efforts to address the effects of any potential force majeure event (1) as it is occurring and (2) following the potential force majeure event, such that the delay is minimized to the greatest extent practicable. Examples of events that are not force majeure events include, but are not limited to, reasonably increased costs or expenses of any Work to be performed under this Settlement Agreement or the financial difficulty of Respondents to perform such Work.

81. If any event occurs or has occurred that may delay the performance of any obligation under this Settlement Agreement, whether or not caused by a force majeure event, Respondents must notify by telephone the Remedial Project Manager or, in his or her absence, the Director of the Superfund Division, EPA Region 6, within 48 hours of when the Respondents knew or should have known, based on information actually made available to Respondents, or information Respondents should have been aware of, that the event might cause a delay. Within five business days thereafter, Respondents must provide in writing the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to mitigate the effect of the delay; and a statement as to whether, in the opinion of Respondents, such event may cause or contribute to an endangerment to public health, welfare or the environment. Respondents must exercise best efforts to avoid or minimize any delay and any effects of a delay. Failure to comply with the above requirements will preclude Respondents from asserting any claim of force majeure.

82. If EPA agrees that the delay or anticipated delay is attributable to force majeure, the time for performance of the obligations under this Settlement Agreement that are directly affected by the force majeure event shall be extended by Settlement Agreement of the parties, pursuant to Section XI of this Settlement Agreement, for a period of time not to exceed the actual duration of the delay caused by the force majeure event. An extension of the time for performance of the obligation directly affected by the force majeure event shall not, of itself, extend the time for performance of any subsequent obligation, unless such extension is agreed upon by the parties pursuant to Section XI of this Settlement Agreement. If an event is deemed to be attributable to force majeure pursuant to this paragraph, the delay shall be deemed not to be a violation of the affected obligation of this Settlement Agreement.

83. If EPA does not agree that the delay or anticipated delay has been or will be caused by a force majeure event, or does not agree with Respondents on the length of the extension, the issue shall be subject to the dispute resolution procedures set forth in section XX of this Settlement Agreement. In any such proceeding, to qualify for a force majeure defense, Respondents shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been, or will be caused by a force majeure event, that the duration of the delay was or will be warranted under the circumstances, that Respondents did exercise or are exercising due diligence by using their best efforts to avoid and mitigate the effects of the delay, and that Respondents complied with the requirements of Paragraph 81.

84. Should Respondents carry the burden set forth in Paragraphs 81 and 83, the delay

at issue shall be deemed not to be a violation of the affected obligation of this Settlement Agreement.

### **XXIII. REIMBURSEMENT OF PAST COSTS**

85. EPA agrees not to seek past response costs in this Settlement Agreement. However, EPA reserves the right to seek recovery of past response costs incurred at the Site in future administrative or judicial actions, pursuant to EPA's respective authority. Such past response costs include all costs, including, but not limited to, direct and indirect costs, that the United States and the State, including, but not limited to, its employees, agents, contractors, consultants, and other authorized representatives, incurred regarding the Site that are not covered as Future Response Costs, as defined in this Settlement Agreement.

### **XXIV. REIMBURSEMENT OF, AND SPECIAL ACCOUNT FOR, FUTURE RESPONSE COSTS**

86. In accordance with Section 122(b)(3) of CERCLA, 42 U.S.C. § 9622(b)(3), Respondents agree to provide funds to EPA for the payment of Future Response Costs. EPA will establish the Star Lake Canal Special Account within the EPA Hazardous Substance Superfund (the "Star Lake Canal Special Account") to retain those funds, which EPA will use for the payment of Future Response Costs incurred by the United States or the State with respect to this Settlement Agreement. Future Response Costs shall mean those costs defined in Paragraph 9 of this Settlement Agreement.

87. In accordance with Section 122(b)(3) of CERCLA, 42 U.S.C. § 9622(b)(3), Respondents agree to provide funds to EPA according to the procedures and time frames described in this Section for the payment of Future Response Costs paid by EPA after the effective date of the Settlement Agreement. EPA will establish a reimbursable special account (the "Star Lake Canal Special Account") within the EPA Hazardous Substance Superfund to retain those funds, which EPA will use for the payment of Future Response Costs incurred by the EPA with respect to this Settlement Agreement. The total amount to be paid by Respondents shall be deposited in the Star Lake Canal Special Account.

88. EPA has estimated that the amount of Future Response Costs that will be expended at this Site on an annual basis will be \$90,000. Based on this estimate, within 30 days of the effective date of this Order, Respondents shall pay \$25,000 to be deposited in the Star Lake Canal Special Account by Electronic Funds Transfer ("EFT"), in accordance with EFT instructions provided by EPA, or by submitting a certified or cashier's check made payable to "EPA Hazardous Substance Superfund" to:

Mellon Bank  
EPA Superfund - Star Lake Canal Superfund Site (06GY)  
CERCLIS #: TX0001414341



Cincinnati Accounting Operation – Region 6  
P.O. Box 371099M  
Pittsburgh, Pennsylvania 15251

Respondents shall reference the "Star Lake Canal Superfund Site (06GY), CERCLIS #: TX0001414341," the name and address of the Respondents, the words "EPA Docket Number CERCLA 06-02-06 Ongoing Response Costs Special Account" on each check. Respondents shall forward a copy of the check and any transmittal letter to the RPM and to:

Chief, Superfund Cost Recovery Section (6SF-AC)  
U.S. Environmental Protection Agency  
Region 6  
1445 Ross Avenue  
Dallas, Texas 75202-2733

89. Whenever the Star Lake Canal Special Account is drawn down by EPA to a balance of approximately \$7500, EPA will send a notice to Respondents and, if warranted, will provide an adjusted estimate of Future Response Costs to be expended annually by EPA. In addition, EPA will submit to Respondents an accounting summary of Response Costs paid from the Star Lake Canal Special Account since the effective date of this Settlement Agreement. The Standard Cost Accounting Report shall be in the form of an unreconciled SCORPIOS cost summary report or some other equivalent unreconciled EPA accounting summary. If Respondents need more detailed information about a specific cost summarized in the above report, Respondents may contact in writing the RPM to inquire about the specific details. The RPM will, within 14 days of such contact, attempt to provide the requested information. After the expiration of this 14-day period, Respondents may request that EPA prepare and certify a Reconciled Cost Accounting Package of Future Response Costs paid since the effective date of this Settlement Agreement. The EPA's cost of preparing the package is a Future Response Cost payable from the Star Lake Canal Special Account.

90. If the Star Lake Canal Special Account is depleted to an amount of \$3500 or less at the time EPA submits a notification and cost accounting summary to Respondents, Respondents shall pay, within ten days of EPA's notice, \$10,000 to the Star Lake Canal Special Account in accordance with the procedure described in Paragraph 88, including without limitation the procedure for providing notice of the remittance. Respondents shall remit the remaining amount to replenish the Star Lake Canal Special Account to \$25,000 in accordance with the procedures and time frames described in Paragraphs 88, 89 and 91.

91. Respondents shall, within 30 days of receipt of a notice and Response Cost accounting summary (i.e., the SCORPIOS report or its equivalent), in accordance with the procedure described in Paragraph 88, remit to the Star Lake Canal Special Account (by EFT, certified check, or cashier's check) the amount EPA identifies as necessary to replenish the Star Lake Canal Special Account to a balance of \$25,000. Respondents shall make such payments

according to the procedures described in Paragraph 88. Neither dispute resolution nor a request to the RPM for more detailed information nor a request for a certified cost accounting shall delay the date that Respondents' payments are due under this paragraph.

92. Following the issuance of this Settlement Agreement, EPA will submit to Respondents on an annual basis an accounting of Future Response Costs, including oversight costs, incurred by the U.S. Government with respect to this RI/FS. Any summaries, including EPA's Standard Cost Accounting Report, or such other summary by EPA, shall serve as the basis for notice of replenishment. The Respondents will have 30 days to request detailed backup information to support all or part(s) of the summaries. This detail information may include, but is not limited to, contractor invoices, signed EPA employee time sheets, travel expense authorizations and reports, and other reimbursement documentation. Respondents will make payment for response costs within 30 days of receipt of this backup information as specified in Paragraphs 88 through 92.

93. Respondents must, within 30 days of receipt of each notice, remit a certified or cashier's check, or an Electronic Funds Transfer (EFT) in accordance with EFT instructions provided by the EPA, for the amount of those costs. Interest will accrue from the date of the bill and shall continue to accrue until the date of payment. The interest rate is the rate of interest on investments for the Hazardous Substances Superfund in Section 107(a) of CERCLA.

94. Respondents may contest payment of any Future Response Costs under Paragraphs 88 through 90 if they determine that EPA has made an accounting error or if they believe EPA incurred excess costs as a direct result of an EPA action that was inconsistent with the NCP. Respondents may invoke the Dispute Resolution provisions of this Settlement Agreement regarding Future Response Costs only after Respondents have made an inquiry, regarding the costs in question, to the RPM as described in Paragraph 89, and the 14-day period in which the RPM is to respond has expired. Respondents must identify any contested costs and provide the basis of its objection. Such objection shall be made in writing within 30 days of receipt of the notification of replenishment and must be sent to the EPA RPM. All undisputed costs must be remitted by Respondents in accordance with the schedule set forth above. Simultaneously, Respondents shall establish an interest-bearing escrow account in a federally-insured bank duly chartered in the State of Texas and remit to that escrow account funds equivalent to the amount of the contested Future Response Costs. Respondents shall send to the EPA RPM a copy of the transmittal letter and check paying the uncontested Future Response Costs, and a copy of the correspondence that establishes and funds the escrow account, including, but not limited to, information containing the identity of the bank and bank account under which the escrow account is established as well as a bank statement showing the initial balance of the escrow account. Simultaneously with establishment of the escrow account, Respondents shall initiate the Dispute Resolution Procedures in Section XX (Dispute Resolution). If EPA prevails in the dispute, within 5 days of the resolution of the dispute, Respondents shall pay the sums due (with accrued interest) to EPA in the manner described in Paragraph 88. If Respondents prevail concerning any aspect of the contested costs, Respondents shall pay that portion of the costs (plus

associated accrued interest) for which they did not prevail to EPA in the manner described in Paragraph 88. Respondents shall be disbursed any balance of the escrow account. The dispute resolution procedures set forth in this Paragraph in conjunction with the procedures set forth in Section XX (Dispute Resolution) shall be the exclusive mechanisms for resolving disputes regarding Respondents' obligation to reimburse EPA for its Future Response Costs. Respondents bear the burden of establishing an EPA accounting error or the inclusion of costs not inconsistent with the NCP.

95. EPA will remit and return to Respondents any balance that remains on the date of termination of this Settlement Agreement in the Star Lake Canal Special Account, or "rollover" the balance to another oversight account for the benefit of the Respondents in a subsequent action on this Site, for which the Respondents assume the lead. Termination and satisfaction of the terms of this Settlement Agreement will be in accordance with Section XXX (Termination and Satisfaction). EPA's obligation to return funds to Respondents from the Star Lake Canal Special Account shall terminate upon EPA's assumption of performance of any portion of the work pursuant to this Settlement Agreement.

#### **XXV. COVENANTS NOT TO SUE BY EPA**

96. In consideration of the actions that will be performed and the payments that will be made by Respondents under the terms of this Settlement Agreement, and except as otherwise specifically provided in this Settlement Agreement, EPA covenants not to sue or to take administrative action against Respondents pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. § 9606 and 9607(a), for the Work and Future Response Costs. This covenant not to sue shall take effect upon the Effective Date and is conditioned upon the complete and satisfactory performance by Respondents of all obligations under this Settlement Agreement, including, but not limited to, payment of Future Response Costs pursuant to Section XXIV. This covenant not to sue extends only to Respondents and does not extend to any other person.

#### **XXVI. RESERVATIONS OF RIGHTS BY EPA**

97. Except as specifically provided in this Settlement Agreement, nothing herein shall limit the power and authority of EPA or the United States to take, direct, or order all actions necessary to protect public health, welfare, or the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants, or contaminants, or hazardous or solid waste on, at, or from the Site. Further, nothing herein shall prevent EPA from seeking legal or equitable relief to enforce the terms of the Settlement Agreement, from taking other legal or equitable action as it deems appropriate and necessary, or from requiring Respondents in the future to perform additional activities pursuant to CERCLA or any other applicable law.

98. The covenant not to sue set forth in Section XXV above does not pertain to any matters other than those expressly identified therein. EPA reserves, and this Settlement Agreement is without prejudice to, all rights against Respondents with respect to all other

matters, including, but not limited to:

- (a) claims based on a failure by Respondents to meet a requirement of this Settlement Agreement;
- (b) liability for costs not included within the definition of Future Response Costs;
- (c) liability for performance of response action other than the Work;
- (d) criminal liability;
- (e) liability for damages from injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;
- (f) liability arising from the past, present, or future disposal, release or threatened release of hazardous substances outside of the Site; and
- (g) liability for costs incurred or to be incurred by the Agency for Toxic Substances and Disease Registry related to the Site.

99. Following satisfaction of the requirements of this Settlement Agreement, Respondents shall have resolved their liability to EPA for the Work performed and Future Response Costs paid by Respondents pursuant to this Settlement Agreement. Respondents are not released from liability, if any, for any response actions taken beyond the scope of this Settlement Agreement regarding removals, other operable units, remedial design/remedial action of this operable unit, or activities arising pursuant to Section 121(c) of CERCLA.

#### **XXVII. COVENANT NOT TO SUE BY RESPONDENTS**

100. Respondents covenant not to sue and agree not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to the Work, Future Response Costs, or this Settlement Agreement, including, but not limited to:

a. any direct or indirect claim for reimbursement from the Hazardous Substance Superfund established by 26 U.S.C. § 9507, based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

b. any claim arising out of the Work or arising out of the response actions for which the Future Response Costs have or will be incurred, including any claim under the United States Constitution, the State Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law; or

- c. any claim against the United States pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to the Work or payment of Future Response Costs.
- d. Notwithstanding subparagraph c, because this is an interim settlement of less than all of Respondents' liability at the Site, Respondents reserve their right to assert claims, if any, for contribution against the United States solely on the basis of any alleged direction, control or involvement of agencies or instrumentalities of the United States with the facilities operating within or impacting upon the Star Lake Canal Superfund Site at the time of disposal of hazardous substances there or with dredging or dredge disposal activities in the canals or the Neches River or connected waterways that allegedly impacted the Site that occurred prior to the commencement of Work.

101. These covenants not to sue shall not apply in the event the United States brings a cause of action or issues an order pursuant to the reservations set forth in Paragraphs 98, 99, and 100, but only to the extent that Respondents' claims arise from the same response action, response costs, or damages that the United States is seeking pursuant to the applicable reservations.

102. Nothing in this Settlement Agreement shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

#### **XXVIII. CONTRIBUTION PROTECTION AND RIGHTS**

103. The Parties agree that this Settlement Agreement constitutes an administrative settlement for purposes of Section 113(f)(2), 42 U.S.C. § 9613(f)(2), and that Respondents are entitled, as of the Effective Date, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f) and 9622(h)(4), for "matters addressed" in this Settlement Agreement. The "matters addressed" in this Settlement Agreement are the Work and Future Response Costs.

104. The Parties agree that this Settlement Agreement constitutes an administrative settlement for purposes of Section 113(f)(3)(B) of CERCLA, 42 U.S.C. § 9613(f)(3)(B), pursuant to which Respondent has resolved its liability to the United States for Work and Future Response Costs.

105. Except as provided in Section XXVII (Covenant Not to Sue by Respondents), nothing in this Settlement Agreement precludes the United States or Respondents from asserting any claims, causes of action, or demands against any persons not parties to this Settlement

Agreement for indemnification, contribution, or cost recovery. Nothing herein diminishes the right of the United States, pursuant to Sections 113(f)(2) and (3) of CERCLA, 42 U.S.C. § 9613(f)(2)-(3), to pursue any such persons to obtain additional response costs or response action and to enter into settlements that provide contribution protection to such persons.

#### **XXVIII. RESERVATIONS OF RIGHTS AND REIMBURSEMENT OF OTHER COSTS**

106. Subject to the Dispute Resolution provisions set out above in Section XX, EPA reserves the right to perform its own studies; to terminate, take over, or undertake activities required under this Settlement Agreement in the event of deficient submissions or other nonperformance; to seek reimbursement for the costs of those actions; and to seek any other appropriate relief. EPA will consult with Respondents' Project Coordinator in advance regarding such studies and activities.

107. Except as expressly provided in this Settlement Agreement, each party to this Settlement Agreement reserves all rights and defenses it may have. Nothing in this Settlement Agreement affects EPA's removal authority or EPA's response or enforcement authorities, including the right to seek injunctive relief, stipulated penalties, statutory penalties, and/or punitive damages.

#### **XXIX. DISCLAIMER**

108. By signing this Settlement Agreement and taking actions under this Settlement Agreement, Respondents do not necessarily agree with EPA's Findings of Fact and Conclusions of Law. Furthermore, the participation of the Respondents in this Settlement Agreement shall not be considered an admission of liability and is not admissible in evidence against the Respondents in any judicial or administrative proceeding other than a proceeding brought by the United States, including EPA, to enforce this Settlement Agreement or a judgment relating to it as described in paragraph 3. Respondents agree not to contest the validity or terms of this Settlement Agreement, or the procedures underlying or relating to it in any action brought by the United States, including EPA, to enforce its terms. Respondents retain their rights to assert claims against other potentially responsible parties at the Site.

#### **XXX. OTHER CLAIMS**

109. In entering into this Settlement Agreement, Respondents waive any right to seek reimbursement under Section 106(b) of CERCLA, 42 U.S.C. § 9606(b). Respondents also waive any right to present a claim under Section 111 or 112 of CERCLA. This Settlement Agreement does not constitute any decision on preauthorization of funds under Section 111(a)(2) of CERCLA. Respondents further waive all other statutory and common law claims against EPA, including, but not limited to, contribution and counterclaims, relating to or arising out of conduct of the RI/FS.

110. Nothing in this Settlement Agreement shall constitute or be construed as a release from any claim, cause of action or demand in law or equity against any person, firm, partnership, subsidiary or corporation not a signatory to this Settlement Agreement for any liability it may have arising out of or relating in any way to the generation, storage, treatment, handling, transportation, release, or disposal of any hazardous substances, pollutants, or contaminants found at, taken to, or taken from the Site. Nothing in this Settlement Agreement may be construed to create any rights in, or grant any cause of action to, any person not a party to this Settlement Agreement.

111. Respondents shall not seek their own costs and attorneys fees from EPA.

### **XXXI. FINANCIAL ASSURANCE, INSURANCE, AND INDEMNIFICATION**

112. Within 30 days of the Effective Date, Respondents shall select either of the financial assurance demonstration methods set out in paragraph 112 or paragraph 113.

113. Respondents shall individually or collectively demonstrate their financial ability to perform the Work and any obligations under this Settlement Agreement, including a margin for cost overruns, pursuant to the financial assurance tests set out in 40 C.F.R. § 264.143, including, but not limited to, a financial test and corporate guarantee for closure.

114. Alternatively, Respondents shall individually or collectively establish and maintain a financial instrument or trust account or other financial mechanism acceptable to EPA, funded sufficiently to perform the Work and any other obligations required under this Settlement Agreement, including a margin for cost overruns. Within 30 days after the effective date of this Settlement Agreement, Respondents shall establish and maintain the financial instrument or trust account sufficiently to perform the Work required under this Settlement Agreement projected for the period beginning with the effective date of the Settlement Agreement until Termination and Satisfaction pursuant to Section XXXIII of this Settlement Agreement. Within 30 days from the Effective Date of this Settlement Agreement, and on or before the 15<sup>th</sup> calendar day of each calendar year quarter thereafter, Respondents shall fund the financial instrument or trust account sufficiently to perform the Work and other activities required under this Settlement Agreement projected for the succeeding calendar year quarter.

115. If at any time the net worth of the financial instrument or trust account is insufficient to perform the Work and other obligations under the Settlement Agreement for the upcoming quarter, Respondents must provide written notice to EPA within thirty (30) days after the net worth of the financial instrument or trust account becomes insufficient. The written notice must describe why the financial instrument or trust account is insufficient and explain what actions have been or will be taken to fund the financial instrument or trust account adequately.

116. (a) Prior to commencement of any Work under this Settlement Agreement, Respondents must secure, and must maintain in force for the duration of this Settlement Agreement, Commercial General Liability (CGL) and automobile insurance, with limits of \$2 million dollars, combined single limit, naming as additional insured the United States. The CGL insurance must include Contractual Liability Insurance in the amount of \$1,000,000 per occurrence, and Umbrella Liability Insurance in the amount of \$2,000,000 per occurrence.

(b) Respondents must also secure, and maintain in force for the duration of this Settlement Agreement and for two years after the completion of all activities required by this Settlement Agreement, the following:

i. Professional Errors and Omissions Insurance in the amount of \$1,000,000.00 per claim/aggregate.

ii. Pollution Liability Insurance in the amount of \$1,000,000.00 per occurrence.

(c) For the duration of this Settlement Agreement, Respondents must satisfy, or must ensure that their contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of employer's liability insurance and Workmen's compensation insurance for all persons performing Work on behalf of the Respondents in furtherance of this Settlement Agreement.

(d) If Respondents demonstrate by evidence satisfactory to EPA that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering the same risks but in a lesser amount, then with respect to that contractor or subcontractor Respondents need provide only that portion of the insurance described above that is not maintained by the contractor or subcontractor.

(e) Prior to commencement of any Work under this Settlement Agreement, and annually thereafter on the anniversary of the effective date of this Settlement Agreement, Respondents must provide to EPA certificates of such insurance and a copy of each insurance policy.

117. At least seven (7) days prior to commencing any Work under this Settlement Agreement, Respondents must certify to EPA that the required insurance has been obtained by that contractor.

118. Respondents agree to indemnify and hold the United States Government, its agencies, departments, agents, and employees harmless from any and all claims or causes of action arising from or on account of negligent or wrongful acts or omissions of Respondents, their employees, agents, servants, receivers, successors, or assignees, or any persons, including, but not limited to, firms, corporations, subsidiaries and contractors, in carrying out activities



under this Settlement Agreement. The United States Government or any agency or authorized representative thereof shall not be held as a party to any contract entered into by Respondents in carrying out activities under this Settlement Agreement.

### **XXXII. EFFECTIVE DATE AND SUBSEQUENT MODIFICATION**

119. The effective date of this Settlement Agreement shall be the date it is signed by EPA

120. This Settlement Agreement may be amended by mutual Settlement Agreement of EPA and the Respondents. Amendments must be in writing and shall be effective when signed by EPA. The EPA RPM does not have the authority to sign amendments to the Settlement Agreement.

121. No informal advice, guidance, suggestions, or comments by EPA regarding reports, plans, specifications, schedules, and any other writing submitted by Respondents will be construed as relieving Respondents of their obligation to obtain such formal approval as may be required by this Settlement Agreement. Any Deliverables, plans, technical memoranda, reports (other than progress reports), specifications, schedules and attachments required by this Settlement Agreement are automatically incorporated into this Settlement Agreement upon approval by EPA.

### **XXXIII. TERMINATION AND SATISFACTION**

122. This Settlement Agreement shall terminate when Respondents demonstrate in writing and certify to the satisfaction of EPA that all activities required under this Settlement Agreement, including all activities required under the Statement of Work, any additional Work, payment of Future Response Costs, and any stipulated penalties demanded by EPA, have been performed and EPA has approved the certification. Within thirty (60) days of receipt of such demonstration and certification from Respondents, EPA shall provide Respondents a written determination on such demonstration and certification. If EPA determines that any such Work has not been completed in accordance with this Settlement Agreement, EPA will notify Respondents, provide a list of deficiencies, and require that Respondents modify the RI/FS Work Plan if appropriate in order to correct such deficiencies. Failure by Respondents to implement the approved modified RI/FS Work Plan shall be a violation of this Settlement Agreement. The certification and EPA's approval of it shall not, however, terminate Respondents' obligation to comply with Sections XIX (Record Preservation), XXIV (Reimbursement of, and Special Account for, Future Response Costs) and XXVI (Reservation of Rights) of this Settlement Agreement.

123. The certification described in the preceding paragraph must be signed by a responsible official representing each Respondent. Each representative must make the following attestation: I certify that the information contained in or accompanying this certification is true, accurate, and complete. For purposes of this Settlement Agreement, a responsible official is a corporate official who is in charge of a principal business function.

BY: Elizabeth E. McDaniel DATE: 9/21/05  
Respondent:

Elizabeth E. McDaniel, V.P. EHS, Americas  
Print Name and Title Huntsman Petrochemical Corporation

BY: \_\_\_\_\_ DATE: \_\_\_\_\_  
Respondent.

\_\_\_\_\_  
Print Name and Title

BY: John R. Hepala, for DATE: 12/22/05  
Sam Coleman, P.E.  
Director, Superfund Division  
U.S. Environmental Protection Agency  
Region 6

123. The certification described in the preceding paragraph must be signed by a responsible official representing each Respondent. Each representative must make the following attestation: I certify that the information contained in or accompanying this certification is true, accurate, and complete. @ For purposes of this Settlement Agreement, a responsible official is a corporate official who is in charge of a principal business function.

BY: Robert John DATE: 12/24/05  
Respondent;

Robert John, Assistant Secretary CEMC  
Print Name and Title

BY: \_\_\_\_\_ DATE: \_\_\_\_\_  
Respondent.

\_\_\_\_\_  
Print Name and Title

BY: John R. Hepala, for DATE: 12/22/05  
Sam Coleman, P.E.  
Director, Superfund Division  
U.S. Environmental Protection Agency  
Region 6

## **ATTACHMENT A**

List of Potentially Responsible Parties to the Administrative Settlement Agreement:

1. **Huntsman Petrochemical Corporation**
  2. **Chevron Environmental Management Company**
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